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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,656	02/14/2001	Harald Vater	JEK/VATER	7577

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 04/17/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/700,656	Applicant(s) VATER ET AL.	
	Examiner Zachary A. Davis	Art Unit 2437	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 14 January 2009 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Zachary A Davis/
Examiner, Art Unit 2437

Continuation of 10. Other (including any explanation in support of the above items):

Regarding item 5 above, the statement of the grounds of rejection is incorrect (see page 5 of the present Appeal brief). The publication number listed for Kocher et al is incorrect; the Kocher publication relied upon was US Patent Application Publication 2002/0124178. Further, the secondary reference, Vanstone et al, US Patent 6337909, is not listed, although it was relied upon in the rejection. Additionally, the brief lists the claims as rejected under 35 U.S.C. 103(a) as "anticipated" (page 5); however, the rejection was not an anticipation rejection (noting that such rejections are made under sections of 35 U.S.C. 102).

Regarding item 7 above, the claims appendix is not correct. Claim 28 includes markings in the claims (strikethrough and underlining, indicating deletion and addition of text, respectively). As per MPEP § 1205.02, the copy of the claims in the claims appendix should be a clean copy and not include markings. Further, as per 37 CFR 41.37(c)(2), a brief shall not include any new or non-admitted amendment; however, it is noted that the amendments indicated in the present appeal brief appear to have been originally made in the response received 08 May 2006 and that with those amendments, the claim text appears to correctly reflect the appealed claims (see the claims submitted in the response received 20 November 2006). Additionally, Claim 42 is not correct; the claim includes text (namely "security-relevant") that was previously deleted from the claim (see the response received 11 October 2006).

Additionally, it is noted that the title of the present brief indicates the that present brief is filed under 37 CFR 1.192; however, that is no longer the section in which the requirements for appeal briefs are described. Rather, the requirements for an appeal brief are now set forth in 37 CFR 41.37, as noted above.